United Nations S/2004/10

Security Council

Distr.: General
9 January 2004

Original: English

Letter dated 9 January 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Switzerland to the United Nations addressed to the President of the Security Council

I have the honour to refer to the second report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) of 2 December 2003 (S/2003/1070). Upon instructions from my Government, I wish to make several comments, which are included in the attached annex.

Switzerland is fully committed to combating terrorism and has actively cooperated with the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities as well as with the Monitoring Group established pursuant to resolution 1363 (2001).

I would be extremely grateful if the present letter and its annex could be circulated as a document of the Security Council.

(*Signed*) Pierre **Helg**
Chargé d'affaires a.i.

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Annex to the letter dated 9 January 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Switzerland to the United Nations addressed to the President of the Security Council

Comments of Switzerland on the second report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) (S/2003/1070)

1. Paragraphs 77 and 80

Investigations undertaken by the Swiss authorities in the summer of 2003 in real estate registry offices in the canton of Ticino have revealed that Mr. Youssef Nada, Mr. Ahmed Idris Nasreddin and the Nada Management Organization SA do not possess any real estate property in that canton. If any such real estate property had been found in the canton of Ticino or in any other canton, the Federal Council would have decided, on the basis of the Federal Constitution, that such property is frozen.

As far as commercial property is concerned, the Nada Management Organization SA, which had its headquarters in Lugano, Switzerland, has been in liquidation since December 2001. As the liquidation has almost been terminated, the headquarters of the company have been closed and the company has no more offices in Lugano. Investigations have shown that the Nada Management Organization SA does not possess any other commercial property in Switzerland.

2. Paragraph 78

Concerning the request of Waldenberg SA for the release of frozen assets, of which the Sanctions Committee was notified according to Security Council resolution 1452 (2002), the facts can be summarized as follows:

- In 1985, the applicant bought a real estate development in Campione d'Italia, Italy
- The Italian fiscal authorities levied taxes upon this transaction, but the value of the property, and thus the amount of the tax itself, was disputed. In 1987, the case was sent before an Italian fiscal court and the first judge's decision was appealed against by the Italian fiscal authorities. Until October 2001, the case was pending before an appellate court in Italy
- In 1990, a bank in Lugano issued a guarantee in favour of the applicant to cover possible claims by the Italian fiscal authorities in relation with the above-mentioned transaction. The provisions of the contract of guarantee included lawyers' expenses
- In October 2001 the Italian judicial authorities reached a final judgement setting the real value of the property, which was quite a bit higher than the initial value. In the light of this final judgement, the Italian fiscal authority claimed an additional tax liability on the real estate
- The legal proceedings in front of the Italian fiscal and judicial authorities induced lawyers' fees

The following elements in paragraph 78 therefore require correction:

- The bank issuing the bank guarantee is not the Bank of Lugano

- The origin of the expenses is not a tax litigation but fiscal taxes levied upon the acquisition of a real estate property by the applicant in Campione d'Italia, Italy
- The acquisition of the real estate took place in 1985, 14 years before the adoption of resolution 1267 (1999) and 16 years before Al Taqwa Trade Property and Industry Company Limited (now Waldenberg AG in liquidation) was included in the consolidated list of individuals, groups and undertakings and entities related to Usama bin Laden, Al-Qaida and the Taliban. The payments do therefore not stand in any relation with the sale of any assets as part of the liquidation of Al Taqwa

3. **Paragraph 101**

While Switzerland is not explicitly mentioned, one would assume that Mr. Nada would probably have had to pass through Switzerland when he travelled from Campione d'Italia, an Italian enclave surrounded by Swiss territory, to Liechtenstein. This could lead to the wrong impression that Swiss border control authorities are failing to implement the travel ban. This is not the case. Swiss border control authorities strictly implement the travel ban at all border control posts. However, for practical reasons and in conformity with international agreements concluded, there are no permanent border controls between Campione d'Italia and Switzerland nor between Switzerland and Liechtenstein.

4. **Paragraph 154**

In this paragraph the report speaks of "... limited weapons-smuggling taking place in Switzerland ...". This is a serious allegation, which gives the wrong impression that the Swiss authorities are not enforcing the arms embargo. Such a general allegation is unacceptable and has to be rejected. In September 2003, two members of the Monitoring Group visited Switzerland and did not raise this issue. Should the Monitoring Group have had indications of any such activity taking place, it would have been expected that the Group would have brought this to the attention of the Swiss authorities so that the necessary measures could be taken.

Switzerland reiterates its willingness to cooperate actively with the Security Council Committee established pursuant to resolution 1267 (1999) and the Monitoring Group established pursuant to Security Council resolution 1363 (2001). It regrets, however, that the Monitoring Group did not seek the necessary clarification on a number of issues contained in its report. Switzerland would thus welcome it if clear guidelines were given to the Monitoring Group for a more proactive and transparent dialogue with concerned Member States in the future.